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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re STEVEN V., a Person Coming
Under the Juvenile Court Law.

VERONICA T.,

Petitioner,

v.

THE SUPERIOR COURT OF THE
STATE OF CALIFORNIA, FOR THE
COUNTY OF LOS ANGELES,

Respondent.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Real Party in Interest.

B179115

(Super. Ct. No. CK51915)

ORIGINAL PROCEEDING. Petition for extraordinary writ denied.

Kenneth A. Krekorian for Petitioner.

No appearance for Respondent.

Raymond G. Fortner, Jr., County Counsel, Larry Cory, Assistant County
Counsel, and Kim Nemoy, Deputy County Counsel, for Real Party in Interest.

Law Offices of Anne E. Fragasso, O. Raquel Ramirez, and Sarah Vesecky for Minor.

Veronica T. (mother), mother of Steven V.,¹ petitions for extraordinary relief pursuant to California Rules of Court, rule 39.1B.² She seeks review of an order setting a permanent plan hearing under Welfare and Institutions Code³ section 366.26. Mother complains that there was insufficient evidence to show that return of Steven to her custody posed a substantial risk to the child, or that an additional period of reunification services would not result in his safe return. We deny the petition.

FACTS AND PROCEDURAL HISTORY

Mother and Steven V. were the subject of several referrals to the Department of Children and Family Services (DCFS) between April 2001 and November 2002. The final referral, alleging caretaker absence and incapacity due to drug use, was substantiated. In order to resolve the matter, mother entered a voluntary contract with DCFS agreeing to complete drug abuse, anger management and parenting programs, and to maintain a job and stable home for Steven, then aged five. As part of that plan, Steven began residing in the home of his maternal grandmother, spending weekends with his paternal grandparents.⁴

On April 21, 2003, mother went to the maternal grandmother's home to see Steven. Mother began verbally abusing Steven. When the maternal grandmother tried

¹ Steven's name is also spelled "Stephen" throughout the record and briefs. We employ the spelling used by his mother, teachers, therapist and, eventually, the juvenile court.

² As of January 1, 2005, the relevant provisions of California Rules of Court, rule 39.1B, were moved to California Rules of Court, rules 38 and 38.1.

³ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

⁴ Steven's father was shot to death on or about August 18, 1998.

to intervene an argument ensued. Mother determined to take Steven from the maternal grandmother. The argument culminated in mother being locked out of the house and pounding on the front door so hard that she broke a pane of glass. Mother also behaved as if she had been using drugs. Police were called. They found mother outside the house, extremely upset and yelling, while Steven hid inside under a bed, afraid to go with mother. The police took Steven into protective custody, concluding mother could not adequately care for him, and contacted DCFS.

The social worker interviewed the parties involved. Mother admitted that she had not completed the programs she agreed to, but still wanted to take custody of Steven. Steven reported that mother hit him with a belt and that he was afraid of her. The maternal grandmother and maternal aunt saw mother hit Steven or pull his ears when frustrated. The paternal grandfather confirmed that mother had been using drugs and that Steven was afraid of her. He also noticed bruises on Steven from time to time. Steven had also told the paternal grandfather that mother threatened to kill either Steven or herself with a knife. According to the family, mother did not have a residence of her own, but stayed with various friends and family. In the end, Steven was detained and placed with his paternal grandparents.

On April 24, 2003, the juvenile court approved the detention. It directed that reunification services be provided to mother, and that she be referred to drug testing, individual counseling and parenting classes. The court later sustained a section 300 petition pursuant to a mediated agreement as to allegations that mother physically and emotionally abused Steven, and that she was periodically unable to care for him due to her drug use. It ordered that Steven remain placed with his paternal grandparents with monitored visits for mother. The court further ordered that mother participate in parenting classes, drug rehabilitation with random drug testing, and individual counseling to address issues including her personal history, grief, substance abuse, family dynamics and anger management training. Steven was also referred for counseling, with mother to participate in conjoint counseling should Steven's therapist deem it appropriate.

In an October 28, 2003 report prepared for the six-month review hearing, DCFS indicated that Steven was doing well in his placement with the paternal grandparents and was receiving weekly counseling. Mother was visiting Steven regularly, and those visits were going well. Mother also had changed jobs to move to a location closer to Steven. Mother enrolled in anger management, parenting classes and counseling. However, she missed a number of her classes. She had further failed to submit to random drug testing. Indeed, DCFS had recorded in an earlier report that that since January 2003, mother submitted to only one random drug test, and once reported herself to be too busy to participate in testing. In that test, mother was positive for cannabinoids. Mother also failed to respond to Steven's therapist to schedule conjoint counseling. In consideration of that report, the juvenile court found that mother was in partial compliance with her case plan and ordered that family reunification services continue for another six months. Steven remained placed with his paternal grandparents.

For the twelve month review hearing, DCFS reported that Steven continued to do well in his placement. Mother had found an apartment, but lost her job. She was participating in individual and conjoint counseling with Steven, and was attending parenting classes. She was also better about keeping in contact with the social worker to ensure she attended meetings, and visited with Steven regularly. Still, mother's participation in her counseling and class sessions was intermittent. Her counselor thought she did not take counseling seriously. Moreover, mother was failing to submit to random drug testing, missing 10 out of 18 tests scheduled for her. Of the eight tests she completed, two were positive for cannabinoids. Nevertheless, given mother's partial participation in her case plan, DCFS recommended another six months of reunification services be provided. The juvenile court agreed and continued reunification to the eighteen month date.

By the time of the eighteen month review, mother's participation in her case plan had improved. DCFS reported that she completed parenting classes and was continuing to participate in anger management classes and individual and conjoint counseling,

though she still missed some sessions. She had also submitted to random drug tests and tested clean. Her visits with Steven had progressed to unmonitored, overnight and weekend visits, and those visits were going well. Mother also had a job as a receptionist. She was no longer in her own apartment, but was living with her sister and the sister's three children. Mother herself indicated to the social worker that the sister's home would not be a good environment for Steven, and felt he was better placed with his paternal grandparents. She further agreed with Steven's therapist that removing Steven from his paternal grandparents' home would be traumatic to Steven. The mother preferred that the paternal grandparents become Steven's legal guardians and that she continue visiting Steven in their home. Accordingly, DCFS recommended termination of family reunification services and setting a 366.26 hearing in which the paternal grandparents could be appointed as Steven's legal guardians.

Despite mother's statements to the social worker, at the time of the eighteen month review hearing she requested a contested hearing on whether a 366.26 hearing should be set and a permanent plan established. The hearing was set for October 25, 2004. In preparation for the hearing, DCFS submitted a supplemental report indicating Steven had expressed a desire to remain with his paternal grandparents and sometimes cut visits with mother short. Steven's therapist submitted a letter saying removing Steven from the security of the paternal grandparents' home could be traumatic and detrimental to him. DCFS also submitted statements from mother's counselors that her attendance had been spotty, including failure to regularly attend AA and NA sessions, and that she needed more therapy.⁵ DCFS further objected that adult occupants of the sister's home where mother resided had not submitted to Livescan testing.

At the contested hearing, several witnesses testified. First, mother's drug and alcohol counselor testified that mother's attendance in her programs was not consistent, but had picked up in the past few months. She felt mother was making progress.

⁵ Attendance records from mother's drug rehabilitation program appear to require attendance at AA or NA meetings as part of that program.

However, the counselor could not say whether mother was ready to take custody of her son.

Mother then testified that she had successfully visited with Steven. She stated that the times he wanted to go "home" from visits early were when he was upset by outside influences rather than any discomfort with her. Instead, Steven indicated to mother that he wished to live with her. Mother further stated her drug tests had been negative for the past six months, and contended that any past dirty tests were only on account of her failure to test. Mother explained that her failure to consistently attend her programs was because she could not get off work. She also stated that she missed NA and AA meetings because the social worker told her they were not required. Mother testified that she would be willing to move in with the paternal grandparents if Steven remained placed with them, but that such an arrangement would be inconvenient to her because of her commute. Alternatively, to ease any transition from Steven's current placement to her custody, mother offered to permit Steven to spend weekends at the paternal grandparents' house. In the end, mother avowed her desire simply to have Steven back, at one point suggesting the juvenile court proceedings had been overblown.

Finally, the paternal grandfather testified that Steven had visited with mother overnight for the prior four or five weeks, and that he wanted to come home early on two or three occasions. He also testified that Steven behaved as though there was less discipline imposed when visiting mother, noting that Steven had to be reminded of the rules when he returned to the paternal grandfather's house, such as not using foul language. Finally, the paternal grandfather stated that Steven thought of the paternal grandparents' house as his home and did not understand he might be moving soon. He warned that Steven would have to be approached carefully with news of any change.

In the end, the juvenile court determined that return of Steven to mother would create a substantial risk of detriment to his physical and emotional well-being, and that mother's failure to complete her case plan constituted prime facie evidence such a risk existed. Indeed, including the six months in which mother agreed to voluntarily

participate in rehabilitation programs before the instant case became necessary, mother received two years' worth of reunification services but failed to make significant progress in her case plan until the very end. In the meantime, Steven had found a home with his grandparents and, according to his therapist, viewed them as his security. In addition, the court noted that mother's concern seemed to be her own interest in having Steven returned to her, rather than what was in Steven's best interests. The court then terminated reunification services, though visitation and conjoint counseling would continue, and set a section 366.26 hearing to consider a permanent plan for Steven. This petition followed. DCFS's answer to the petition was joined by counsel for Steven.

DISCUSSION

Mother contends DCFS produced insufficient evidence to support the juvenile court's finding that returning Steven to her custody would pose a risk of detriment to him. However, in assessing whether there is sufficient evidence to support the juvenile court's ruling, this court reviews the findings under the substantial evidence rule. (*Curtis F. v. Superior Court* (2000) 80 Cal.App.4th 470, 474; *Angela S. v. Superior Court* (1995) 36 Cal.App.4th 758, 762.) That is, the appellate court will not reweigh the evidence or exercise independent judgment regarding the ruling, and will view the record in the light most favorable to the findings. Every reasonable and legitimate inference will be construed in favor of the finding. (*In re Julie M.* (1999) 69 Cal.App.4th 41, 46; *In re Misako R.* (1991) 2 Cal.App.4th 538, 545; *In re Matthew S.* (1988) 201 Cal.App.3d 315, 321.) As the record in this case shows, there was substantial evidence to support the juvenile court's finding that return of Steven to mother would pose a risk to him. Accordingly, that ruling must be upheld.

The fact that mother failed to complete or even regularly attend the programs in her case plan is prima facie evidence that returning Steven to her care would place him at risk. (§ 366.22, subd. (a).) Particularly, her failure to complete anger management classes and counseling, which address the very behaviors that required Steven's detention in the first place, supports the juvenile court's determination that mother was

not yet in a position to take custody of Steven. As the juvenile court noted, it was not until the end of the extended reunification period that mother's efforts to comply with her case plan appeared to become serious. Not only did reunification consume the entire 18 month period allowed by statute, but mother received voluntary reunification services for six months before that period commenced, effectively providing her a full two years to complete her programs and demonstrate that she could safely take custody of Steven. Still, she failed to timely complete the case plan.

Steven's counselor also indicated returning him to mother's care could prove detrimental. In a report dated September 22, 2004, she stated that taking Steven from the security of his grandparents' home could be quite traumatic, and risked causing him to lose any progress he had made in interacting favorably with mother. In the therapist's opinion, Steven would require a substantial transition period to adequately adjust. Substantiating that opinion was evidence that Steven had only recently begun having overnight stays with mother, and was sometimes asking to return "home" to his grandparents' house early. Steven's paternal grandfather also testified that he did not believe Steven understood that an objective of visitation was to return him to mother's custody. The paternal grandfather expressed a wariness of even approaching Steven on the subject. In addition, evidence that Steven's behavior after visits with mother indicated a lapse in discipline, including use of inappropriate language, further supported the conclusion that mother remained ill-equipped to take custody of Steven. Even mother's counselor, while convinced that mother wanted to regain custody, could not say that it would be appropriate to return Steven to his mother at this time. Indeed, mother herself initially agreed that Steven would be best placed with his paternal grandparents, and offered no explanation of how she and Steven could successfully live in her current residence, her sister's house, despite her earlier admission it was not the best environment for Steven.

Mother's further argument that she should have been provided more than 18 months of reunification services also fails. Section 366.22, subdivision (a), requires that after 18 months reunification services must be terminated and a section 366.26 hearing

set. (See also § 361.5, subd. (a).) Additional reunification services are only offered beyond the 18-month period in extraordinary circumstances, not simply where the parent has failed to complete his or her case plan in the allotted time. (*In re N.M.* (2003) 108 Cal.App.4th 845, 852, 855-857; *In re Brequia Y.* (1997) 57 Cal.App.4th 1060, 1068.) No such extraordinary circumstances appear in this case.

DISPOSITION

The petition for extraordinary relief is denied. This opinion shall become final immediately upon filing. (Cal. Rules of Court, rule 24(b)(3).)

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ARMSTRONG, Acting P.J.

We concur:

MOSK, J.

KRIEGLER, J.*

* Judge of the Superior Court of Los Angeles County, assigned by Chief Justice pursuant to article VI, section 6, of the California Constitution.